

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

GREGORIO SMITH,

Defendant.

8:12CR135

ORDER

This matter is before the court on the motion to continue by defendant Gregorio Smith (Smith) (Filing No. 57). Smith seeks a continuance of the trial of this matter which is scheduled for October 1, 2012. Smith's counsel has represented to the court that Smith will submit an affidavit wherein Smith represents that he consents to the motion and acknowledges he understands the additional time may be excludable time for the purposes of the Speedy Trial Act. Smith's counsel represents that government's counsel has no objection to the motion. Upon consideration, the motion will be granted.

IT IS ORDERED:

1. Smith's motion to continue trial (Filing No. 57) is granted.
2. Trial of this matter is re-scheduled for **November 5, 2012**, before Judge Joseph F. Bataillon and a jury. The ends of justice have been served by granting such motion and outweigh the interests of the public and the defendant in a speedy trial. The additional **time** arising as a result of the granting of the motion, i.e., the time between **September 26, 2012, and November 5, 2012**, shall be deemed **excludable** time in any computation of time under the requirement of the Speedy Trial Act for the reason that defendants' counsel require additional time to adequately prepare the case. The failure to grant additional time might result in a miscarriage of justice. 18 U.S.C. § 3161(h)(7)(A) & (B).

DATED this 26th day of September, 2012.

BY THE COURT:

s/ Thomas D. Thalken
United States Magistrate Judge